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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 175

CHARLES MCBRYDE  
5510 Fair Oaks Blvd.  
Carmichael, CA 95608

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 5522

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 28, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 5522 to Charles McBryde (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(f) Negligence in his or her practice as a respiratory care practitioner.”

12           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
13 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
14 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
15 violate any provision or term of this chapter or of any provision of Division 2  
16 (commencing with Section 500).”

17           “(l) Changing the prescription of a physician and surgeon, or falsifying verbal or  
18 written orders for treatment or a diagnostic regime received, whether or not that action  
19 resulted in actual patient harm.”

20           “(o) Incompetence in his or her practice as a respiratory care practitioner.”

21           7.       Section 3755 of the Code states:

22           “The board may take action against any respiratory care practitioner who is  
23 charged with unprofessional conduct in administering, or attempting to administer, direct  
24 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,  
25 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
26 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
27 monitoring techniques, and violation of any provision of Section 3750. The board may  
28 determine unprofessional conduct involving any and all aspects of respiratory care

1 performed by anyone licensed as a respiratory care practitioner.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
4 shall be considered to be substantially related to the qualifications, functions or duties of  
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
6 perform the functions authorized by his or her license or in a manner inconsistent with the  
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
10 abetting the violation of or conspiring to violate any provision or term of the Act.”

#### 11 COST RECOVERY

12 9. Section 3753.5, subdivision (a) of the Code states:

13 "In any order issued in resolution of a disciplinary proceeding before the board,  
14 the board or the administrative law judge may direct any practitioner or applicant found to have  
15 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
16 investigation and prosecution of the case."

17 10. Section 3753.7 of the Code states:

18 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
19 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
20 administrative, filing, and service fees."

21 11. Section 3753.1 of the Code states:

22 "(a) An administrative disciplinary decision imposing terms of probation may  
23 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
24 associated with monitoring the probation. "

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1 FIRST CAUSE FOR DISCIPLINE

2 (Changing a Physician's Orders)

3 12. Respondent is subject to disciplinary action under code sections 3750(l)  
4 [changing a physician's orders] in that he changed a patient's ventilator settings without  
5 obtaining an order from the treating physician. Respondent failed to verify the physician's order  
6 to the patient and administered treatment to the wrong patient. The circumstances are as follows:

7 13. On or about March 14, 2008, Respondent was employed as a respiratory  
8 care practitioner in the intensive care unit at Dameron Hospital Association in Stockton,  
9 California. He claimed that a nurse asked him to wean a patient from a ventilator providing  
10 oxygen, and at approximately 3:00 a.m., he wrote an order in Patient A<sup>1</sup>'s chart: "Change to  
11 SIMV rate 12, tidal volume 500, Peep of 5 cm, Fi O<sub>2</sub> 25% PPS per weaning orders by Dr. Dah"  
12 and signed his name. However, Michael Thornton, M.D. was Patient A.'s treating physician, not  
13 Meherdoosh Dah, M.D. and had not authorized the orders.

14 14. Respondent's act of writing the order violated Dameron Hospital policy.  
15 Said policy required all procedures to either be communicated by a physician directly to the  
16 respiratory care practitioner, or, in the alternative, required a verbal order from the physician to a  
17 registered nurse, written into the medical records by the nurse, and countersigned by the  
18 physician. Said policy also required the respiratory care practitioner to verify the identity of the  
19 patient and the patient's physician before initiating any procedure.

20 15. On March 14, 2008, at approximately 9:15 a.m., Dr. Thornton observed  
21 Patient A. and noted that Patient A. had increased apneic episodes. Dr. Thornton had not ordered  
22 any change in the respiratory treatment orders for Patient A. He observed the orders Respondent  
23 had written and disagreed with the change Respondent had made. The order Respondent wrote  
24 was not clinically appropriate for Patient A as it was intended for another patient.

25 16. In a subsequent investigation, Respondent stated that S.P., a registered  
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27 1. The full name of the patient will be provided to Respondent pursuant to a Request for  
28 Discovery.

1 nurse, had verbally informed him that Dr. Dah wanted a patient weaned from oxygen. However,  
2 Respondent admitted that he, not nurse S.P., wrote the order for Patient A., that he did not verify  
3 that Dr. Dah was the treating physician for Patient A., that he did not verify any existing orders in  
4 the chart for Patient A., and that he did not verify the patient's identity; all in violation of hospital  
5 policies.

6 17. Therefore, Respondent's acts or omissions as set forth in paragraphs 13  
7 through 16 hereinabove constitutes changing the treating physician's orders for Patient A.  
8 without consent, and is a violation of code section 3750(l) and cause to discipline his license.

9 SECOND CAUSE FOR DISCIPLINE

10 (Negligence; Incompetence; and Unprofessional Conduct)

11 18. The allegations contained in paragraphs 13 through 16 are incorporated  
12 herein.

13 19. Respondent's acts or omissions as set forth in paragraphs 13 through 16  
14 hereinabove constitutes negligence in violation of code section 3750(f), and/or incompetence in  
15 violation of code section 3750(o), and/or unprofessional conduct in violation of code section  
16 3755, and cause to discipline his license.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
19 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

20 1. Revoking or suspending Respiratory Care Practitioner License Number  
21 5522, issued to Charles McBryde;

22 2. Ordering Charles McBryde to pay the Respiratory Care Board the costs of  
23 the investigation and enforcement of this case, and if placed on probation, the costs of probation  
24 monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: May 6, 2009

Original signed by Colleen Whitestine for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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